

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT PETERSON,	§	
	§	No. 658, 2010
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 89000270DI
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 9, 2011

Decided: March 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 4th day of March 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Robert Peterson (“Peterson”), the defendant below, appeals from a Superior Court order denying his motion to discharge him from probation. On appeal, Peterson claims that the trial court abused its discretion, because the interests of justice are best served by terminating his Delaware probation sentence, thereby enabling him to serve the full range of his Florida sentence. We find no error and affirm.

2. In November 1989, Peterson was convicted in Delaware for Unlawful Sexual Intercourse in the Third Degree, and was sentenced to 10 years of Level V

incarceration, suspended after 5 years for decreasing levels of supervision. Over the next decade, Person filed five motions for sentence reduction, all of which were denied. He did succeed, however, in obtaining a modification of the terms of his post-release supervision.

3. In March 1999, the Delaware Department of Correction (“DOC”) charged Peterson with violating the terms of his probation (“VOP”). After finding him guilty of that VOP, the Delaware Superior Court sentenced Peterson to 5 years at Level V incarceration, suspended after serving 90 days. In November 2000, DOC charged Peterson with a second VOP. A *capias* was issued, and Peterson was convicted of the second VOP in February 2002. For that violation, he was sentenced to 4 years at Level V incarceration, suspended after 1 year for 3 years at Level II probation.

4. In May 2002, during his Level V incarceration period, Peterson applied to have the probation portion of his sentence completed in Florida.¹ The State of Florida, however, rejected that request in August 2002. Upon being released from Level V incarceration in October 2002,² Peterson fled to Florida. In December

¹ The probation transfer request was made pursuant to the Interstate Compact for Adult Offender Supervision. *See* Florida Dept. of Corr., Interstate Compact for Adult Offender Supervision: Transferring supervised offenders across state boundaries, <http://www.dc.state.fl.us/pub/ic/> (last visited March 3, 2011).

² Peterson had received credit for 53 days previously served.

2002, the DOC charged Peterson with a third VOP for absconding from probation, and a capias was issued on January 6, 2003.³

5. In May 2003, while on absconder status from his Delaware probation, Peterson was involved in a robbery in Florida. He was arrested and convicted for second-degree robbery and second-degree conspiracy, and the Florida court sentenced him to 10 years in prison. Peterson is currently serving that sentence at the Dade Correctional Institution in Florida. His present release date from Florida is November 11, 2011.

6. On August 2, 2010, Peterson petitioned the Superior Court to discharge him from his Delaware probation on the basis that he was seeking to participate in a Florida re-entry rehabilitative program. To participate in that program, Peterson must first complete his Delaware probation.⁴ In his motion, Peterson stated that he was a resident of Florida, had no family ties to Delaware, and had no plans to return to Delaware after his release from Florida prison. The DOC opposed Peterson's motion based on Peterson's criminal history and his repeated violations of probation. The trial court denied Peterson's motion on those grounds, and this appeal followed.

³ But for the January 2003 capias, Peterson's sentence for his second VOP would have expired on October 25, 2005. Presently, the January 2003 capias is still pending.

⁴ Peterson has not provided any further details about Florida's rehabilitative re-entry program.

7. On appeal, Peterson claims that the trial court erred in denying his motion to discharge him from probation on the basis that “the ultimate interests of justice” requires the court to terminate the remainder of his 2002 VOP sentence (*i.e.*, the remaining 3 years at Level II probation), thereby enabling him to serve the “full range” of his Florida sentence that was imposed in 2003 as a result of his robbery and conspiracy convictions. The reason, Peterson argues, is because he has no intention of returning to reside in Delaware and intends to remain in Florida with his family. Therefore, Florida has a greater current and future interest in his rehabilitation than does Delaware. Moreover, he urges, Delaware’s interest in monitoring him as a previous sex offender based on his 1989 conduct is accommodated by the enforcement of the Federal Sex Offender Registration and Notification Act.

8. A trial court has broad discretion in granting and terminating a defendant’s probation.⁵ The trial court also has the statutory authority to

⁵ *Williams v. State*, 560 A.2d 1012, 1015 (Del. 1989) (“We consider [11 *Del. C.* §§ 4301 and 4333] to confer broad discretion upon trial courts regarding the grant and termination of probation.”).

terminate a probationary sentence “at any time.”⁶ Accordingly, we review a trial court’s denial of a motion for discharge from probation for abuse of discretion.⁷

9. The trial court did not abuse its discretion in refusing to terminate Peterson’s probation and discharge him. As the record shows, Peterson has a history of noncompliance with his probation sentences. His post-release probation conduct raises serious questions about his ability to comply with the law. In fact, before Peterson absconded to Florida in late 2002, he had already twice violated the terms of his Delaware probation. As a result of those two VOPs, Peterson was required to serve an additional year and three months of his suspended prison sentence. Upon being released from prison the second time, Peterson then fled the state, and shortly thereafter committed armed robbery in Florida.

10. Although Peterson is now incarcerated in Florida and is serving a substantial portion of his Florida sentence, that does not alter the fact that, by absconding to Florida in late 2002, Peterson violated the terms of his Delaware probation a third time. That third VOP is still outstanding, and has yet to be addressed.

⁶ 11 *Del. C.* § 4333(a) (2010).

⁷ See *Phoenix v. State*, 830 A.2d 409 (Table), 2003 WL 21991655, at *1 (Del. 2003) (noting that the Superior Court has wide discretion in imposing conditions on probation); *Brown v. State*, 249 A.2d 269, 271-72 (Del. 1968) (establishing that the standard of review for a revocation of probation is abuse of discretion).

11. Peterson admirably seeks to participate in Florida's rehabilitative re-entry program. His enrollment in that program, however, has not been foreclosed by the trial court's denial of his discharge motion, but only delayed. In view of Peterson's repeated violations of his Delaware probation, and his inability to comply with the law, the trial court did not abuse its discretion in denying his motion for discharge from probation on that basis.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice